

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 ANGEL GONZALEZ,

5 Plaintiff,

6 v.

7 COSMOPOLITAN HOTELS & RESORTS,
8 INC.,

9 Defendant.
10

Case No. 2:13-cv-002273-APG-VCF

**ORDER ON MOTION FOR DEFAULT
JUDGMENT**

(DKT. #8)

11 Plaintiff Angel Gonzalez requests a default judgment against defendant Cosmopolitan
12 Hotels and Resorts, Inc., a local hotel and casino (the “Cosmopolitan”). Gonzalez appears to
13 contend that, because the Cosmopolitan failed to respond to his complaint, he is automatically
14 entitled to default judgment. But to get a default judgment, a plaintiff must establish a number of
15 things, such as that the complaint is sufficient and that the amount of damages requested is
16 accurate. Gonzalez has not even attempted to make these showings. I therefore deny his motion.
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18 Obtaining a default judgment is a two-step process.¹ First, when a defendant fails to
19 properly respond, the plaintiff must request that the clerk enter the defendant’s default.² After the
20 clerk enters default, a party may then seek entry of a default judgment pursuant to Rule 55(b).
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27 ¹ *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986).

28 ² Fed. R. Civ. P. 55(a).

1 Upon entry of default, I take as true the factual allegations in the complaint.³ Nonetheless,
 2 “[e]ntry of default does not entitle the [plaintiff] to a default judgment as a matter of right.”⁴ I
 3 must consider: (1) the possibility of prejudice to the plaintiff; (2) the merits of the plaintiff’s
 4 substantive claims; (3) the sufficiency of the complaint; (4) the sum of money at stake in the
 5 action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due
 6 to excusable neglect; and (7) the strong policy underlying the Federal Rules of Civil Procedure
 7 favoring decisions on the merits.⁵ The plaintiff bears the burden of establishing that her motion
 8 for default judgment is warranted.⁶ As a general rule, default judgments are disfavored.⁷
 9 Ultimately, whether a default judgment will be granted is within my discretion.⁸

11 As explained above, a fact-intensive, seven-factor test guides my decision to grant default
 12 judgment. Gonzalez has failed to establish that any of these factors favor default judgment in this
 13 case. He does not address his potential prejudice, the merits of his claims, the possibility of
 14 disputes as to the material facts, the accuracy of his claimed damages,⁹ or whether the underlying
 15 default resulted from excusable neglect.

18 ³ *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987) (quoting
 19 *Geddes v. United Financial Group*, 559 F.2d 557, 560 (9th Cir. 1977)).

20 ⁴ *Warner Bros. Entm’t Inc. v. Caridi*, 346 F. Supp. 2d 1068, 1071 (C.D. Cal. 2004)
 21 (quoting *Valley Oak Credit Union v. Villegas*, 132 B.R. 742, 746 (9th Cir. BAP 1991)).

22 ⁵ *Eitel*, 782 F.2d at 1471–72.

23 ⁶ *See, e.g., Kantor v. Monument Homes Realty & Inv., LLC*, No. CV081451PHX-DGC,
 24 2009 WL 113844, at *1 (D. Ariz. Jan. 16, 2009) (“Plaintiff does not address the *Eitel* factors. Nor
 25 has he presented evidence establishing the monetary damages he seeks. Because Plaintiff has not
 26 met his default judgment burden, the Court will deny his motion without prejudice.”); *see also*
 27 L.R. 7-2.

28 ⁷ *Id.* at 1472.

⁸ *See Hawaii Carpenters' Trust Funds v. Stone*, 794 F.2d 508, 511–12 (9th Cir. 1986);
Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092
 (9th Cir. 1980).

⁹ Gonzalez’s attorney avers that the “claim” is for “the sum of \$30,000.00, plus interest.”
 But there is no explanation of why this is an appropriate sum.

1 Because Gonzalez failed to establish that default judgment is warranted, I deny his
2 motion.

3 IT IS THEREFORE ORDERED that Plaintiff Angel Gonzalez' Motion for Default
4 Judgment (Dkt. # 8) is DENIED.

5 **DATED** this 17th day of April, 2015.

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9 ANDREW P. GORDON
10 UNITED STATES DISTRICT JUDGE
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